



March 8, 2010

U.S. Army Corps of Engineers  
Attn: CECW-CE, Douglas J. Wade  
441 G Street NW  
Washington, DC 20314-1000

Re: Docket number COE-2010-0007: Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls

Dear Mr. Wade:

This letter provides comments, concerns and recommendations regarding the February 9, 2010 proposal by Army Corps of Engineers (Corps) to revise its policy for requesting a variance from the national standard for managing vegetation on levees.

We agree that public safety is of paramount importance when considering flood management, levee maintenance, and levee vegetation standards. However, as a federal agency, the Corps is also required to comply with the Endangered Species Act (ESA) and its Section 7 obligations to not jeopardize listed species and not adversely modify critical habitat. Levees must be managed in a manner that maximizes their public safety benefits and meets ESA obligations. Such management will improve the health of our nation's rivers and improve the quality of life in communities.

The current national levee vegetation standards have been documented as being harmful to fish, wildlife, habitat, and water quality. The current proposal to revise the process for requesting variances from the national standard takes a bad situation and makes it worse.

The existing national levee vegetation standards were developed decades ago and do not reflect current science regarding the beneficial role that vegetation – including large trees – can play in strengthening levees. Rather than increasing flexibility for local levee managers to manage levees for the benefit of public safety and ecological health, the proposed process would have the effect of further locking in an outdated policy. It would also make it harder for the Corps and local levee managers to meet their ESA obligations to protect and restore listed species affected by levee management.

We urge the Corps to rescind this proposal, and instead begin a public process to revise the national levee vegetation standards based on current science. In the interim, we ask that the Corps permit greater regional flexibility to allow jurisdictions to integrate habitat and water quality goals while maintaining public safety priorities. Ultimately, where retaining vegetation does not compromise public safety, it should be encouraged.

The national levee vegetation standards generally require removal of trees greater than two inches in diameter. However, since 1995 the Puget Sound region of Washington State has operated under a variance that allows vegetation up to four inches in diameter. Even this variance does not allow for large, shade bearing trees, the absence of which harms salmon by increasing water temperatures, reducing food availability, and diminishing habitat quality. The National Marine Fisheries Service (NMFS) recently released a Biological Opinion (BiOp)<sup>1</sup> determining that the Corps' levee vegetation standards in Puget Sound, including the variance, adversely affect ESA listed salmon:

“Maintaining levee vegetation to [Corps] standards leads to reduced levels and/or absolute removal of vegetation. This is especially true for overhanging riparian vegetation that would otherwise function as natural cover. Eliminating trees from levees eliminates riparian shade, sources of juvenile [salmon] forage, and recruitable large woody debris. Large woody debris creates structural complexity in streams, on which salmonids rely for pools, riffles, and cover from predators.”<sup>2</sup>

The Puget Sound BiOp also demonstrates that scientific research, and even the Corps' own analysis, shows that vegetation on levees can enhance public safety:

“An increasing amount of scientific information demonstrates that root structure and brushy vegetation protect levee stability and decrease levee failures (Dwyer et al., 1997, COE 2001a, Gray et al. 1991, Geyer et al., 2003, Hollis and Leech 1997, Abernethy and Rutherford 2000a). Some of the literature establishing the stabilization benefits of vegetation to river banks have been generated by the COE's own research center based in Vicksburg, Mississippi.”<sup>3</sup>

The Corps' February 9, 2010 proposal is also contrary to agreements recently made by Corps officials. As a result of issues raised by the BiOp related to salmon restoration and levee vegetation policies, the Corps sponsored a February 2009 symposium in Puget Sound titled “An Examination of Levee Vegetation Policy.” During that symposium, the Corps stated that the Puget Sound regional variance on levee vegetation would remain in place until levee vegetation research currently underway at the Corps' Engineering Research and Development Center was completed. Although this research has not been completed, the Corps' proposal would invalidate Puget Sound's existing (and already insufficient) variance, which is counter to the Corps previous statements and would further harm salmon restoration efforts.

To obtain a new variance under this proposal, each levee segment would require a separate application for a variance (as opposed to the regional variance currently in place), which would be extremely time-consuming and costly for jurisdictions to accomplish. Because of these barriers, it is likely that many jurisdictions would not request a variance, and thus even more

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<sup>1</sup> Endangered Species Act – Section 7 Consultation Final Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation: Implementation of the National Flood Insurance Program in the State of Washington Phase One Document – Puget Sound Region, prepared by National Marine Fisheries Service Northwest Region, September 22, 2008.

<sup>2</sup> BiOp, Page 130.

<sup>3</sup> BiOp, Page 85.

vegetation would be removed from levees than is currently the case. This would increase the adverse affects to salmon critical habitat.

The *Puget Sound Salmon Recovery Plan* provides a blueprint for salmon restoration. It calls for protecting existing riparian habitat and providing habitat features that support salmon survival and reproduction. The Corps' levee vegetation standards are in direct conflict with the salmon recovery plan because they require the removal of important salmon habitat features.

In addition, aquatic systems contained by levees are also subject to the federal Clean Water Act. Consultations on state water quality standards demonstrate that riparian vegetation including trees is crucial to provide shade and cool water for salmon, bull trout, and other fish species. In some cases, large vegetation on levees is necessary to meet CWA requirements. Removing existing riparian vegetation and precluding the growth of additional riparian vegetation would exacerbate existing water temperature problems for rivers listed as impaired under Section 303(d) of the Clean Water Act.<sup>4</sup>

The issues outlined above lead us to the following recommendations:

- The Corps should rescind this proposal for revising its levee vegetation variance process. The requirement to define each levee segment is too onerous to be practical for most jurisdictions. Regional variances should continue to be allowed.
- The Corps should allow more flexibility under the vegetation variance to counties that can demonstrate that large trees and other vegetation do not compromise the levee's integrity and public safety. Even under the current variance, King County was required to cut trees that were not harmful to levees and that were beneficial to salmon.
- The Corps should revise its national levee vegetation standards to incorporate current science regarding the beneficial effects of some vegetation to levee stability and public safety. The revisions should reflect the importance of integrating ESA species and habitat protections where applicable.
- The Corps should work with NMFS to develop levee vegetation standards to allow retention of native riparian vegetation, based on the most recent best available science. Examples of potential changes include using height restriction rather than diameter restriction in order to minimize potential levee damage from toppling, and giving preference to limbing lower branches to allow visual access and flood fight access rather than tree removal.<sup>5</sup>
- If the changes proposed in the notice go forward, the Corps should allow the current Seattle District regional variance to remain in place and allow a minimum of two years to supply the documentation requested to review existing variances (rather than the currently proposed deadline of Sept. 30, 2010)
- The Corps should reinitiate consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service regarding the impact of the Corps' levee vegetation requirements on species listed under the ESA. The Corps initiated consultation with the National Marine Fisheries Service in 2003; however, the consultation process was

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<sup>4</sup> See: NOAA-Fisheries Endangered Species Act - Section 7 Consultation, Biological Opinion And Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation On EPA's Proposed Approval of Revised Washington Water Quality Standards for Designated Uses, Temperature, Dissolved Oxygen, and Other Revisions (Feb. 5, 2008) ; and U.S. Fish and Wildlife Service Biological Opinion for Environmental Protection Agency's Proposed Approval of the Revised Washington Water Quality Standards for Designated Uses, Temperature, Dissolved Oxygen, and Other Revisions (Feb. 11, 2008).

<sup>5</sup> See BiOp, Page 175.

subsequently halted by the Corps. Because development of levee vegetation policy is a discretionary federal action by the Corps, it is subject to ESA Section 7 consultation requirements.

- The levee vegetation research referenced during the February 2009 symposium should be completed and the results released to the public.

We believe that public safety and salmon recovery can be achieved simultaneously. We ask the Corps to provide the Puget Sound region with flexibility to accommodate these community priorities. Thank you for your consideration.

Sincerely,



Michael Garrity  
Washington Conservation Director  
American Rivers



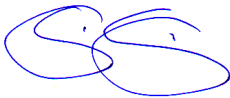
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